

## Statement of Preliminary Issues

### Mainland Print Limited and Inkwise Limited

1 April 2019

#### Introduction

1. On 18 March 2019, the Commerce Commission registered an application (the Application) from Mainland Print Limited (Mainland) seeking clearance to acquire the heatset and coldset web offset printing assets of Inkwise Limited (Inkwise) (Proposed Acquisition).<sup>1</sup>
2. The Commission will give clearance if it is satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
3. This statement of preliminary issues sets out the issues we currently consider to be important in deciding whether or not to grant clearance.<sup>2</sup>
4. We invite interested parties to provide comments on the likely competitive effects of the Proposed Acquisition. We request that parties who wish to make a submission do so by **15 April 2019**.

#### The parties

##### *The target*

5. Inkwise, which is 50% owned by Ashburton Guardian Limited, uses the subject assets (located in Rolleston) to provide heatset printing services to magazine publishers and retail catalogue customers, and coldset printing services to newspaper publishers.

##### *The applicant*

6. Mainland is a recently established joint-venture company owned in equal shares by Blue Star Group (New Zealand) Limited (Blue Star) and Allied Press Limited (Allied Press).
7. Blue Star supplies a range of commercial printing services including heatset web offset printing to magazine publishers and retail catalogue customers (heatset printing), provided through a division called Webstar. It has heatset printing operations in Masterton and Auckland.

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<sup>1</sup> A Public version of the application will be available on our website at: <https://comcom.govt.nz/case-register/case-register-entries/mainland-print-limited-and-inkwise-limited>.

<sup>2</sup> The issues set out in this statement are based on the information available when it was published and may change as our investigation progresses. The issues in this statement are not binding on us.

8. Allied Press is a South Island-based publisher of daily and community newspapers and has interests in newspaper printing operations in Dunedin, Alexandra and Greymouth. Allied Press also provides coldset printing services to other newspaper publishers.

### **Our framework**

9. Our approach to analysing the competition effects of the Proposed Acquisition is based on the principles set out in our Mergers and Acquisitions Guidelines.<sup>3</sup> As required by the Commerce Act 1986, we assess mergers and acquisitions using the substantial lessening of competition test.
10. We compare the extent of competition in each relevant market both with and without the Proposed Acquisition. This allows us to assess the degree by which the Proposed Acquisition might lessen competition.<sup>4</sup> If the lessening of competition as a result of the Proposed Acquisition is likely to be substantial, we will not give clearance. When making that assessment, we consider, among other matters:
- 10.1 constraint from existing rivals – the extent to which current rivals compete and the degree to which they would expand their sales if prices increased;
  - 10.2 constraint from potential new entry – the extent to which new competitors would enter the market and compete if prices increased; and
  - 10.3 the countervailing market power of buyers – the potential constraint on a business from the purchaser’s ability to exert substantial influence on negotiations.

### **Market definition**

11. We define markets in the way that we consider best isolates the key competition issues that arise from the merger. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Commerce Act, as a matter of fact and commercial common sense.<sup>5</sup>
12. Mainland submits that the relevant markets are:<sup>6</sup>
- 12.1 the market for the supply of coldset web offset printing in the South Island; and
  - 12.2 the national market for heatset offset printing services, or in the alternative:
    - 12.2.1 the national market for the supply of printing for national retail catalogues;

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<sup>3</sup> Commerce Commission, *Mergers and Acquisitions Guidelines*, July 2013. Available on our website at [www.comcom.govt.nz](http://www.comcom.govt.nz)

<sup>4</sup> *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

<sup>5</sup> Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

<sup>6</sup> The Application at [73].

12.2.2 the national market for the supply of heatset printing to magazine customers with print runs less than 20,000-25,000 copies; and

12.2.3 the national market for the supply of heatset printing to magazine customers with print runs greater than 20,000-25,000 copies.

13. We will test whether these market definitions are appropriate. In particular, we will consider whether:
- 13.1 the relevant coldset printing market is South Island-wide or narrower (there is some evidence to suggest that publishers may require local printing so newspapers can be distributed on time);
  - 13.2 the relevant heatset printing market is a single market for the provision of heatset printing services (as defined in a previous clearance decision of the Commission<sup>7</sup>), or whether (as suggested by Mainland) there are distinct customer markets; and
  - 13.3 the relevant heatset printing market(s) is/are still national (as defined in the Commission's previous decision), or whether there are separate North and South Island markets.

### **Without the acquisition**

14. We will consider what Mainland (or its shareholders) and Inkwise would do if the Proposed Acquisition did not go ahead. We will consider the evidence on whether the without-the-acquisition scenario is best characterised by the status quo, or whether there are other likely counterfactual scenarios.

### **Preliminary issues**

15. The questions that we will be focusing on when assessing whether the Proposed Acquisition would be likely to substantially lessen competition in the relevant markets are set out below.
- 15.1 Horizontal unilateral effects: would the Proposed Acquisition reduce competition through reducing or eliminating the constraint that suppliers of each of heatset and coldset printing services impose upon one another?
  - 15.2 Coordinated effects: would the Proposed Acquisition change the conditions in the relevant markets so that coordination is more likely, more complete, or more sustainable?
  - 15.3 Vertical effects: would Mainland, or its shareholders, have the ability and incentive to foreclose rivals and render them less able to compete?

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<sup>7</sup> PMP Print Limited and APN Print NZ Limited (Commerce Commission Decision 708, 16 December 2010).

**Horizontal unilateral effects: would the Proposed Acquisition reduce competition through eliminating the constraint that suppliers of each of heatset and coldset printing services currently impose upon one another?**

16. Where two suppliers compete in the same market, a merger of the two would remove a competitor that would otherwise act as a competitive constraint, potentially allowing the merged entity to raise prices or lessen quality.<sup>8</sup> A merger could also reduce competition if one of the merging firms was a potential or emerging competitor. In such a case, the merger may preserve the market power of the incumbent firm.
17. There is existing overlap between Inkwise and each of the owners of Mainland: Blue Star and Allied Press. Inkwise and Blue Star overlap in heatset printing. Inkwise and Allied Press overlap in coldset printing in the South Island.
18. Mainland submits that the Proposed Acquisition will not substantially lessen competition in any of the relevant markets due to horizontal unilateral effects, arguing that:<sup>9</sup>
  - 18.1 customers will retain the option of using other competing suppliers, including (but not limited to) Stuff Limited (Stuff) for coldset printing and Ovato (formerly PMP) for heatset printing;
  - 18.2 given significant declines in printing volumes, suppliers are incentivised to compete strongly to win customer contracts to utilise their printing presses;
  - 18.3 in heatset printing, Ovato is Blue Star’s closest competitor, not Inkwise (which is a minor participant and not a particularly disruptive competitive force), and the Proposed Acquisition can be expected to increase competitive tension between Ovato and Blue Star; and
  - 18.4 heatset printing customers are large and sophisticated, and able to exert pressure on suppliers to constrain price increases.
19. To assess whether the Proposed Acquisition may enable Mainland or its shareholders to raise prices in the areas of overlap, we plan to assess:
  - 19.1 how closely Mainland and its shareholders (Blue Star in respect of heatset and Allied Press in respect of coldset printing) and Inkwise compete with one another (and the degree of constraint that they impose on each other), and the extent to which that constraint may increase without the Proposed Acquisition;
  - 19.2 the degree of constraint provided by rival suppliers of printing services;

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<sup>8</sup> For ease of reference, we only refer to the ability of the merged entity to “raise prices” from this point on. This should be taken to include the possibility that the merged entity could reduce quality or innovation, or worsen an element of service or any other element of competition (ie, it could increase quality-adjusted prices).

<sup>9</sup> The Application at 3-5 and [121].

- 19.3 if the Proposed Acquisition would be likely to result in price increases, whether entry or expansion would be likely, timely, and sufficient in extent to defeat those increases; and
- 19.4 whether customers have special characteristics that would enable them to resist a price increase.

**Coordinated effects: would the Proposed Acquisition make coordination more likely?**

20. A merger can substantially lessen competition if it increases the potential for the merged entity and all or some of its remaining rivals to coordinate their behaviour and collectively exercise market power such that output reduces and/or prices increase across the market. Unlike a substantial lessening of competition, which can arise from the merged entity acting on its own, coordinated effects require some or all of the firms in the market to be acting in a coordinated way.
21. Mainland submits that the Proposed Acquisition will not substantially lessen competition in any of the relevant markets due to coordinated effects, arguing that:<sup>10</sup>
- 21.1 Inkwise is not an atypically vigorous or strong competitor;
- 21.2 given significant declines in printing volumes, suppliers are incentivised to compete strongly to win customer contracts to utilise their printing presses;
- 21.3 suppliers compete by bidding for customer contracts that come up irregularly and have bespoke, non-transparent terms; and
- 21.4 in heatset printing, Blue Star and Ovato are likely to have different costs to serve different customers.
22. We will assess whether the Proposed Acquisition would make coordination more likely, more complete or more sustainable. As part of our assessment we will consider whether any of the relevant markets are vulnerable to coordination, and whether the Proposed Acquisition would change the conditions in the relevant markets. In particular, we will assess whether the Proposed Acquisition would make it easier for Mainland or its shareholders to monitor and punish the behaviour of rivals and hence make coordination more likely.

**Vertical effects: would Mainland, or its shareholders, be able to engage in behaviour that forecloses rivals and renders them less able to compete?**

23. A vertical merger is a merger between firms operating at different levels of a supply chain (for example, a wholesaler and a retailer). Vertical mergers can provide merged entities the ability and incentive to foreclose downstream rivals, including by raising the costs of rivals or by changing the conditions of entry to make it harder to enter or expand.

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<sup>10</sup> The Application at [184-191].

24. Mainland submits that the Proposed Acquisition will not substantially lessen competition in any of the relevant markets due to vertical effects because it will not increase the prospects of Allied Press foreclosing any independent community newspapers by withholding printing services. Mainland argues that:<sup>11</sup>
- 24.1 there is very limited overlap between Allied Press' community newspapers and those of independent publishers which may limit Allied Press' incentive to attempt foreclosure;
  - 24.2 Allied Press is unlikely to be able to implement a foreclosure strategy given that its joint venture partner, Blue Star, could lose printing revenue for no gain (as it lacks a publication business) and so may block the strategy; and
  - 24.3 the continued existence of Stuff and Ovato as alternative suppliers of printing services would limit Mainland's ability to foreclose, even if Blue Star were to support an attempt.
25. We will assess whether the Proposed Acquisition might give Mainland or either of its shareholders the ability and incentive to foreclose rivals. In particular, we will consider:
- 25.1 whether Mainland, or its shareholders, would have the ability to foreclose, through having control over an important input;
  - 25.2 whether Mainland, or its shareholders, would have the incentive to foreclose, through earning additional profit from the strategy that outweighs the costs of lost sales; and
  - 25.3 whether the competition lost from any foreclosed competitors would be sufficient to have the likely effect of substantially lessening competition.

### **Next steps in our investigation**

26. The Commission is currently scheduled to make a decision on whether or not to give clearance to the Proposed Acquisition by **16 May 2019**. However, this date may change as our investigation progresses.<sup>12</sup> In particular, if we need to test and consider the issues identified above further, the decision date is likely to extend.
27. As part of our investigation, we will be identifying and contacting parties that we consider will be able to help us assess the preliminary issues identified above.

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<sup>11</sup> The Application at [115-117].

<sup>12</sup> The Commission maintains a case register on our website at <https://comcom.govt.nz/case-register> where we update any changes to our deadlines and provide relevant documents.

**Making a submission**

28. If you wish to make a submission, please send it to us at [registrar@comcom.govt.nz](mailto:registrar@comcom.govt.nz) with the reference “Mainland/Inkwise” in the subject line of your email, or by mail to The Registrar, PO Box 2351, Wellington 6140. Please do so by close of business on **15 April 2019**.
29. Please clearly identify any confidential information contained in your submission and provide both a confidential and a public version. We will be publishing the public versions of all submissions on the Commission’s website.
30. All information we receive is subject to the Official Information Act 1982 (OIA), under which there is a principle of availability. We recognise, however, that there may be good reason to withhold certain information contained in a submission under the OIA, for example in circumstances where disclosure would unreasonably prejudice the supplier or subject of the information.